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D'PARIS CHARLES WILLIAMS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

D'PARIS CHARLES WILLIAMS, an
individual,

Plaintiff,

v.

CITY OF SAN FRANCISCO, a municipal
corporation; GREGORY SKAUG,
individually and in his capacity as an officer
for the SAN FRANCISCO Police
Department; MILEN BANEGAS, individually
and in his capacity as an officer for the SAN
FRANCISCO Police Department;
THEODORE POLOVINA, individually and
in his capacity as an officer for the SAN
FRANCISCO Police Department; DOES, 1-
25, inclusive, individually and in their
capacities as officers for the SAN
FRANCISCO Police Department,

Defendants.

Case No:

**PLAINTIFF'S COMPLAINT FOR
DAMAGES**

[JURY TRIAL DEMANDED]

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INTRODUCTION

1. This is an action for damages brought pursuant to Title 42 U.S.C §§ 1983 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution, under California Civil Code § 52.1 and § 51.7, and under the common law of California. This action is against the CITY OF SAN FRANCISCO, GREGORY SKAUG, MILEN BANEGAS, and THEODORE POLOVINA of the SAN FRANCISCO Police Department, and DOES 1-25.

2. It is also alleged that these violations and torts were committed due to the actions of the above mentioned officers of the SAN FRANCISCO Police Department.

VENUE AND JURISDICTION

3. The unlawful acts and practices alleged herein occurred at or near the CITY OF SAN FRANCISCO, California, within the jurisdictional boundaries of this court. The damages sought are within the jurisdictional limits of this court.

PARTIES

4. At all times mentioned herein, D'PARIS CHARLES WILLIAMS (hereinafter "Plaintiff") was and is a resident of the state of California, and a United States Citizen.

5. Defendant City of SAN FRANCISCO (hereinafter "CITY") is and at all times herein mentioned a municipal entity duly organized and existing under the laws of the State of California. Under its authority, the CITY operates the CITY Police Department.

6. At all times mentioned herein, Defendant GREGORY SKAUG (hereinafter "SKAUG") is and at all times herein mentioned an officer of the CITY Police Department.

7. At all times mentioned herein, Defendant MILEN BANEGAS (hereinafter "BANEGAS") is and at all times herein mentioned an officer of the CITY Police Department.

8. At all times mentioned herein, Defendant THEODORE POLOVINA (hereinafter "POLOVINA") is and at all times herein mentioned an officer of the CITY Police Department.

9. Plaintiff is ignorant of the true names and/or capacities of defendants sued herein as DOES 1 through 25, inclusive, and therefore sue said Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff believes and alleges that each of the DOE defendants is legally responsible and liable for the incident, injuries and damages hereinafter set forth. Each defendant proximately caused injuries and damages because of their negligence, breach of duty, negligent supervision, management or control, violation of public policy, and false arrests. Each defendant is liable for his/her personal conduct, vicarious or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether based upon agency, employment, ownership, entrustment, custody, care or control or upon any other act or omission. Plaintiff will ask leave to amend this complaint subject to further discovery.

10. In doing the acts alleged herein, Defendants, and each of them acted within the course and scope of their employment.

11. In doing the acts and/or omissions alleged herein, Defendants, and each of them, acted under color of authority and/or under color of law. Due to the acts and/or omissions alleged herein, Defendants, and each of them, acted as the agent, servant, and employee and/or in concert with each of said other Defendants herein.

12. For State causes of action related to Federal claims, Plaintiff is required to comply with an administrative claim requirement under California law. Plaintiff has complied with all applicable requirements.

FACTUAL ALLEGATIONS

13. On November 15, 2013, at approximately 3:30 p.m., Plaintiff was returning home from the Make-A-Wish Foundation ‘Batkid’ event, in Downtown San Francisco. Plaintiff’s home is located at 44 Maxwell Court, in San Francisco, California.

14. Immediately after Plaintiff began to walk into his house, he heard someone say ‘come here.’ After Plaintiff went in the front door and greeted his nephew, he turned to respond to the voice he had just heard. The Defendant plainclothes police officers, KRAUG, BANEGAS, and POLOVINA never identified themselves as police officers and were not

1 wearing uniforms or insignia to identify themselves as such. However, Defendant KRAUG
2 told Plaintiff that he needed to come outside of the house because he rode his bicycle on the
3 sidewalk. At this time Plaintiff recognized the Defendants as plainclothed CITY police
4 officers, because of the dialogue and the noticeable bullet proof vests Defendants were
5 wearing under their clothing. Plaintiff apologized for riding his bicycle on the sidewalk, but
6 the Defendant officers insisted that Plaintiff come outside of his house.

7 15. Plaintiff told the Defendant officers that they had no right to ask him to come
8 outside of his house, but Defendant officers inexplicably reached into the house, Plaintiff and
9 pulled him outside of the house. Plaintiff held onto the doorframe and continued to tell the
10 Defendant officers that their actions were illegal. At all times herein mentioned, Plaintiff
11 was unarmed and posed no threat to the officers or the public.

12 16. For no legally justified reason, the Defendant officers threw Plaintiff onto the
13 ground, face down. The Defendant officers punched Plaintiff in the ribcage and he began to
14 yell out in pain. The Defendant officers punched Plaintiff in the face and in the back of his
15 neck over five times, causing him to black out for a few seconds. When Plaintiff gained
16 consciousness, the Defendant officers were choking him.

17 17. Thereafter, the Defendant officers handcuffed Plaintiff and transported him to the
18 Valencia Police Station. Hours later, Plaintiff was taken to San Francisco General Hospital,
19 where he remained handcuffed for over three hours. Plaintiff's hands became numb and stiff
20 due to the pressure from the handcuffs. Plaintiff overheard officers laugh at him as he lay in
21 pain, in the hospital bed.

22 18. Plaintiff was then transported to jail and booked for resisting arrest, resisting
23 executive officer, assault with force, and riding bike on sidewalk. Plaintiff spent three days
24 in jail. However, Plaintiff's charges were dropped pending investigation. Plaintiff suffered
25 from severe injuries to his face and was unable to eat for three days due to the pain and
26 swelling of his face. This egregious and excessive use of force was witnessed by and
27 captured on video by numerous people.
28

DAMAGES

20. As a proximate result of Defendants' conduct, Plaintiff suffered substantial physical injuries from the officers' wrongful arrest and detention and use of excessive force. As a further proximate result of Defendants' conduct, Plaintiff incurred damages caused by the assault, and battery by Defendant officers and DOES 1-25. Plaintiff suffered severe and extreme emotional distress, fear, terror, anxiety, humiliation, and loss of sense of security, dignity, and pride as a United States Citizen.

21. The conduct of defendants was malicious, wanton, and oppressive. Plaintiff is therefore entitled to and aware of punitive damages against said defendants.

FIRST CAUSE OF ACTION

22. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 21 of this Complaint.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

Violation of Fourth Amendment of the United States Constitution

(42 U.S.C. §1983)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

24. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 23 of this Complaint.

25. Defendants' above-described conduct, wherein it is alleged that officers arrested Plaintiff without probable cause violating his rights as provided for under the Fourth Amendment to the United States Constitution to be free from unlawful seizure (arrest).

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

THIRD CAUSE OF ACTION

Violation of Fourth Amendment of the United States Constitution

(42 U.S.C. §1983)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

26. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

27. Defendants' above-described conduct violated Plaintiff's right as provided for under the Fourth Amendment to the United States Constitution to be free from excessive force and/or the arbitrary and/or unreasonable use of deadly force against him.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Violation of Fourth Amendment of the United States Constitution)

(*Monell* – 42 U.S.C. section 1983)

(Against CITY OF SAN FRANCISCO, and DOES 11 to 25)

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 of this Complaint.

29. Plaintiff is informed and believes and thereon alleges that high-ranking CITY OF SAN FRANCISCO officials, including high-ranking police supervisors such as DOES 11

1 through 25, and/or each of them, knew and/or reasonably should have known about repeated
2 acts of misconduct by Defendant officers KRAUG, BANEGAS, POLOVINA and DOES 1-
3 10, and/or each of them.

4 30. Despite having such notice, Plaintiff is informed and believes and thereon alleges
5 that Defendant DOES 11-50, and/or each of them, approved, ratified, condoned, encouraged,
6 sought to cover up, and/or tacitly authorized the continuing pattern and practice of
7 misconduct and/or civil rights violations by said police officers.

8 31. Plaintiff is further informed and believes and thereon alleges that as a result of the
9 deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendant
10 officers KRAUG, BANEGAS, POLOVINA and DOES 1-10 and/or each of them,
11 encouraged these officers to continue their course of misconduct and caused these officers'
12 lack of training, resulting in the violation of the Plaintiff's rights as alleged herein.

13 32. Plaintiff further alleges that Defendant DOES 11-25, and/or each of them, were
14 on notice of the Constitutional defects in their training of CITY OF SAN FRANCISCO
15 police officers, including, but not limited to unlawful arrests and detentions not based on
16 probable cause.

17 33. The aforementioned acts and/or omissions and/or deliberate indifference by high
18 ranking CITY OF SAN FRANCISCO officials, including high ranking CITY OF SAN
19 FRANCISCO Police Department supervisors, Defendant DOES 11-50, and each of them
20 resulted in the deprivation of Plaintiff's constitutional rights including, but not limited to the
21 right to be free from unreasonable searches and seizures, as guaranteed by the Fourth
22 Amendment to the United States Constitution, the right to not be deprived of life, liberty or
23 property without due process of the law, as guaranteed by the Fourteenth Amendment to the
24 United States Constitution and the right to be free from excessive force by police officers, as
25 guaranteed by the Fourth Amendment to the United States Constitution.

26 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

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FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 of this Complaint.

35. Defendants' above-described conduct was extreme, unreasonable and outrageous.

36. In engaging in the above-described conduct, defendant intentionally ignored or recklessly disregarded the foreseeable risk that Plaintiff would suffer extreme emotional distress as a result of defendants conduct.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SIXTH CAUSE OF ACTION

(Violation of Plaintiff's Right To Enjoy Civil Rights)

(Violation of CALIFORNIA CIVIL CODE §52.1)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

37. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 36 of this Complaint.

38. Defendants' above-described conduct constituted interference, and attempted interference, by threats, intimidation and coercion, with Plaintiff's peaceable exercise and enjoyment of rights secured by the Constitution and laws of the United States and the State of California, in violation of California Civil Code §52.1.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

SEVENTH CAUSE OF ACTION

(Violation of State Statutory Rights)

(Violation of California Civil Code §51.7)

(Against KRAUG, BANEGAS, POLOVINA, and DOES 1 to 10)

1 45. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 44
2 of this Complaint, except for any and all allegations of intentional, malicious, extreme,
3 outrageous, wanton, and oppressive conduct by defendants, and any and all allegations
4 requesting punitive damages.

5 46. The present action is brought pursuant to section 820 and 815.2 of the California
6 Government Code. Pursuant to section 820 of the California Government Code, as public
7 employees, DOES 1 to 25 are liable for injuries caused by their acts or omissions to the same
8 extent as a private person. At all times mentioned herein, KRAUG, BANEGAS,
9 POLOVINA, and Defendant DOES 1 to 25 were acting within the course and scope of their
10 employment and/or agency with Defendants CITY. As such Defendants CITY are liable in
11 *respondeat superior* for the injuries caused by the acts and omissions of KRAUG,
12 BANEGAS, POLOVINA, and DOES 1 to 25 pursuant to section 815.2 of the California
13 Government Code.

14 47. CITY, KRAUG, BANEGAS, POLOVINA, and DOES 1 to 25 negligently and
15 without due care, and without cause or provocation struck Plaintiff. The striking of Plaintiff
16 was unjustified as there were no facts or circumstances which warranted the use of any force
17 at the time.

18 48. The striking of Plaintiff occurred as a result of the absence of due care for the
19 safety of others and constituted an unreasonable, unwarranted, and excessive use of force and
20 manifested an unreasonable risk of injury to Plaintiff.

21
22 **DEMAND FOR PUNITIVE DAMAGES**

23 49. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully
24 alleged here.

25 50. Defendants' above-described statements and actions were at all times engaged in
26 with malice, oppression or fraud, particularly when they struck D'PARIS CHARLES
27 WILLIAMS with the intention of causing injury to him or with reckless disregard for the
28 possibility that they would injure him.

51. Defendants' intentional or reckless use of force of a defenseless citizen who was cooperating with officers was despicable and warrants punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For general damages, according to proof;
2. For special damages, according to proof;
3. For punitive damages, according to proof;
4. For violation of California Civil Code Sections 52.1, statutory damages, and reasonable attorney's fees;
5. For violation of California Civil Code Section 52(b), punitive damages against Defendant agents and/or officers, \$25,000.00 for each offense and reasonable attorney's fees;
6. For statutory damages, according to proof;
7. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
8. For cost of suit herein incurred; and
9. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 23, 2014

THE LAW OFFICES OF JOHN L. BURRIS

/s/ DeWitt M. Lacy
DeWitt M. Lacy
Attorney(s) for Plaintiffs